

# MYERS, SCARLETT, AND RALEY NOMINATIONS

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## HEARING BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

ON

THE NOMINATIONS OF WILLIAM GERRY MYERS III, NOMINEE TO BE SOLICITOR, DEPARTMENT OF THE INTERIOR; PATRICIA LYNN SCARLETT, NOMINEE TO BE ASSISTANT SECRETARY FOR POLICY, MANAGEMENT, AND BUDGET, DEPARTMENT OF THE INTERIOR; AND BENNETT WILLIAM RALEY, NOMINEE TO BE ASSISTANT SECRETARY OF THE INTERIOR FOR WATER AND SCIENCE

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## **MYERS, SCARLETT, AND RALEY NOMINATIONS**

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**WEDNESDAY, JUNE 20, 2001**

U.S. SENATE,  
COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
*Washington, DC.*

The committee met, pursuant to notice, at 9:35 a.m. in room SD-366, Dirksen Senate Office Building, Hon. Jeff Bingaman, chairman, presiding.

### **OPENING STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO**

The CHAIRMAN. The committee will come to order. The hearing this morning is on President Bush's nomination of three individuals, Patricia Lynn Scarlett to be the Assistant Secretary of the Interior for Policy Management and Budget, William Gerry Myers III to be the Solicitor of the Department of the Interior, and Bennett William Raley to be the Assistant Secretary of the Interior for Water and Science.

We will start, without objection, by including in the record the testimony, written testimony of each witness. The committee questionnaire, and the financial disclosure statements will be retained in committee files.

Let me defer to Senator Murkowski for any opening statement he wanted to make, and then we have some people here to introduce the nominees before we actually hear from them.

Senator Murkowski.

### **STATEMENT OF HON. FRANK H. MURKOWSKI, U.S. SENATOR FROM ALASKA**

Senator MURKOWSKI. Thank you very much, Senator Bingaman. We certainly have some well-qualified nominees before us, and I won't go into their background at this time, because I think those that are introducing them will do that. I want to thank you for holding the hearing this morning. I think it is important we deal with the nominations in a timely manner, and I appreciate the way you have agreed to move on these nominations.

I would like to call your attention to a situation where we have been having difficulty with Steven Griles as Deputy Secretary of the Department of the Interior. Holds have been put in that particular nomination, and I think it is unfair for the Secretary to be in a position where she only has one confirmed person at the Department of the Interior, and that is herself, so I would encourage all of you who might be able to help us move that nomination. I

think what we hoped to get was a time agreement for some debate on it, and so with that, I would yield to the folks who are going to introduce our witnesses today.

The CHAIRMAN. Okay. Thank you very much. We have two Senators who are here to introduce Bennett Raley, Senator Allard and Senator Campbell. Senator Campbell, of course, is a Member of this committee. Let me call on Senator Campbell for his statement first, then on Senator Allard.

**STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S.  
SENATOR FROM COLORADO**

Senator CAMPBELL. Thank you, Mr. Chairman.

I certainly am proud to be able to introduce Bennett Raley from Colorado, who President Bush has nominated to be Assistant Secretary of the Interior for Water and Science. Bennett is not a newcomer to Washington, Mr. Chairman, having worked for our former colleague, Hank Brown. I know that he knows many staffers here, and certainly some of the committee members, personally.

I believe Bennett Raley will complement the team in place, and is the right person for the job. His experience will help accelerate and improve work at the Department of the Interior, especially at the Bureau of Reclamation, and across the Nation as well.

In my home State of Colorado, where water is literally life itself, Bennett already has worked for many years in the water field, and has extensive knowledge on these issues, which are all covered in his biography, which has been provided for the committee members, and so I will not go through them completely, but he has demonstrated that he has the knowledge, he has the professional credentials, and the proven ability to build consensus when addressing conflicts needed for someone in the position for which he has been nominated. Our Nation's water policy, especially in the area of the West, is essential, and required an accomplished advocate like Bennett at the helm to guide it.

Bennett also has been a very, very strong voice for promoting and enhancing our water management policy. He has an institutional knowledge, as well as the extensive experience in water issues which is important to many of our western members here on this committee.

The growing populations and changing cultural values are placing increased demands with each passing year on our existing and limited water supplies, resulting in conflicts in water use throughout the country. Recent conflicts are particularly apparent in the West, where agriculture needs for water are often in dire and direct conflict with urban needs, and others, like the demand for water for endangered species and recreation.

In the arid West, naturally scarce water supplies and growing urban populations have increased Federal-State tensions, because the States historically have had primacy in interstate water allocations. Debate over Western water issues is not unlike the current energy debates that center in and around the area of California, and how best to plan for the future, and how to manage. Managing them is extremely important. I believe Bennett will do a very, very fine job, and I wholeheartedly endorse his nomination.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much. Senator Allard, did you have a statement also?

**STATEMENT OF HON. WAYNE ALLARD, U.S. SENATOR  
FROM COLORADO**

Senator ALLARD. Yes, Mr. Chairman, I do. First of all, I want to thank you for giving me an opportunity to introduce Mr. Raley and an opportunity to join my colleague. I would second all of his comments, and would just elaborate just a few minutes more to introduce my fellow Coloradan, Bennett Raley, who is being considered for the position of Assistant Secretary for Water and Science at the Department of the Interior.

As you know, Bennett has outstanding qualifications to serve as Assistant Secretary for Water and Science. He currently practices law in Denver relating to water development, mining, grazing, and recreation on Federal and private lands, and Mr. Chairman, as you probably are aware, he has a very extensive background representing water interests, in particular the Northern Colorado Water Conservancy District, and the development and implementation of the Endangered Species Recovery programs in the Upper Colorado and Platte River Basins, and these are extremely tough issues.

In this past year, Mr. Raley was helpful in drafting legislation, now Public Law 106-392, which authorized cost-share funding for the Upper Colorado River endangered fish recovery program, and many members on this committee in the West helped work on that piece of legislation.

Mr. Raley also serves as a Special Assistant Attorney General for the State of New Mexico Interstate Stream Commission in Federal court relating to the implementation of the Endangered Species Act and the Rio Grande and Pecos Rivers.

In addition to Bennett's private practice experience, he has served as staff counsel to my predecessor, who most of you know, U.S. Senator Hank Brown, and was a cochair of the Federal Water Rights Task Force established pursuant to the 1996 Freedom to Farm Act. His strong background in Western law will prove to be immensely useful at the Department in this capacity.

During my tenure in Congress, I found Bennett has been most helpful. He has been a great resource to me and my staff on water law issues, and I think Senator Campbell has found him equally helpful. We have utilized his expert analysis during our many discussions with Federal land management agencies, particularly as they apply to our water law that we have in the Western part of the United States.

I strongly urge the committee to give Bennett Raley a favorable recommendation for Assistant Secretary for Water and Science, and I thank you for your serious consideration on this most important matter.

The CHAIRMAN. Thank you very much for that statement. I am advised that Senator Craig wanted to make a short statement in support of William Myers for Solicitor of the Department of the Interior.

**STATEMENT OF HON. LARRY E. CRAIG, U.S. SENATOR  
FROM IDAHO**

Senator CRAIG. Mr. Chairman, thank you very much. Let me introduce to the committee Bill Myers, who many of you might have begun to know as he served with Senator Al Simpson as a legislative counsel to him for a good number of years before he moved to the Department of Justice, and then to the Department of the Interior, or Energy.

I first got to know Bill when he was working as the executive director for the Public Lands Council for the National Cattlemen, and for other organizations who came together on public lands issues. He now resides in Boise, Idaho, as a member of a law firm there, and of course I have worked with Bill extensively over the years on public lands issues. He brings a talent that I think is important to us at the Department of the Interior, because of his vast knowledge and experience, also his energy, and a balance that I think he recognizes. Public lands must be administered for all interests that this country seek to apply to them.

So I highly recommend him to the committee. I think he will serve us well and, mostly importantly, he will serve this administration and our Secretary of the Interior very well.

Thank you.

The CHAIRMAN. Thank you very much.

Senator Thomas, did you also wish to make a statement of introduction?

Senator THOMAS. Thank you, Mr. Chairman. I simply wanted to join the Senator from Idaho. Bill Myers practiced law in Wyoming, working for Al Simpson, my predecessor, and certainly I just want to join in recommending him to the members of the committee.

The CHAIRMAN. Thank you.

We also have Representative Capps from California here to introduce another of the nominees, Lynn Scarlett. Why don't you go ahead, Representative Capps.

**STATEMENT OF HON. LOIS CAPPS, U.S. REPRESENTATIVE  
FROM CALIFORNIA**

Mrs. CAPPS. Thank you, Mr. Chairman, and members of this committee. It is an honor to be here and appear before you today, and I am very pleased to introduce to the committee Lynn Scarlett, who is a constituent of my congressional district.

Lynn Scarlett is President Bush's nominee to be Assistant Secretary for Policy, Management, and Budget at the Department of the Interior. As you all know, this important position has a wide-ranging portfolio of duties that encompasses all aspects of the Department's mission. Clearly, the person appointed to this job must be someone with the intellectual heft to deal with complicated matters of both policy and management, and I believe any position at this level of Government requires an unwavering dedication to serving the American people.

I met with Lynn soon after her nomination was announced. I was impressed with both her intellect and her commitment to public service, and I believe the committee will be well-served. She is a 30-year resident of Santa Barbara County, California, and obtained her bachelor's and master's degrees in political science, completed



her Ph.D. coursework, and was an instructor of public administration at the University of California in Santa Barbara.

She is a member of the dean's Advisory Council of UCSB's Wren School of Environmental Science and Management. She is also a long-time birder, and member of the local chapter of the Audubon Society, and as you can tell from her biography she is a well-published writer and researcher on environmental issues, and has served in a number of positions in private and government-organized projects on these matters.

Mr. Chairman, I believe the employees at the Department of the Interior had a special charge. Interior is responsible for the preservation of some of the most magnificent natural resources in this country.

For example, in my district, which is Lynn's home area as well, is the 250,000-acre Channel Islands National Park. It contains a stunning array of natural and cultural resources, from the tiniest plankton to the blue whale. Some of the plants and animals in this park are found nowhere else in the world. Some of the cultural artifacts date back 10,000 years, and all this is present just miles from the densely packed Southern California coast.

The Department of the Interior can and, I believe, must ensure Channel Islands and other such treasures are just as beautiful and vibrant when my grandchildren and all of our children's grandchildren are senior citizens, so I hope and trust that new appointees like Lynn Scarlett will ensure that this special charge to hold national treasures in trust for future generations is carried out with determination and diligence.

Again, Mr. Chairman, and members of this committee, thank you for this honor to appear before you today, and to introduce the nominee to be the Under Secretary of the Department of the Interior.

The CHAIRMAN. Thank you for your statement. Thanks for coming to the committee today.

We also have a written statement that has been prepared by Representative Edward Royce that I will introduce into the record at this time in support of the nomination of Lynn Scarlett.

[The prepared statement of Mr. Royce follows:]

PREPARED STATEMENT OF HON. EDWARD R. ROYCE, U.S. REPRESENTATIVE  
FROM CALIFORNIA

Chairman Bingaman and members of the committee, I am pleased to take this opportunity to support Lynn Scarlett's nomination for Assistant Secretary for Policy, Management, and Budget in the Department of the Interior. I have known and worked with Lynn for over 15 years and believe she will be a valuable addition to the Administration.

Lynn's record of commitment to sound environmental policy makes her more than qualified to meet the challenges of this position. Since 1985, Lynn, has specialized in environmental policy at the Los Angeles-based Reason Foundation, eventually being promoted to president and CEO of the organization. Her work has focused on finding areas of cooperation between government, environmental groups and industry, and developing innovative partnerships with the goal of protecting and conserving our environment.

As executive director of Reason Public Policy Institute, the foundation's think tank division, Lynn has published extensively on land use management, recycling, and innovative environmental practices, and has on numerous occasions advised federal, state, and local legislative and regulatory bodies on pending environmental proposals. Her practical experience includes working with the Environmental Protection Agency to help develop a "full-cost accounting" workbook for solid waste

managers. Lynn's work at the think tank has proven to be a veritable clearinghouse for state regulators and legislators on environmental programs for land, air, water, waste, and agriculture that use incentives, place-based decision-making, and performance measures.

Lynn has demonstrated superior administrative abilities and extensive knowledge about the challenges facing our nation's public lands. She garners widespread support and respect from many individuals nationwide. I have no doubt that Lynn Scarlett will bring an experienced and well-tested approach to the Department of the Interior.

Thank you for your consideration of my views.

The CHAIRMAN. Let me dismiss the two of you and ask the nominees to come up to the witness table, and we will administer the oath to them.

Could each of you stand? The committee rules require that all nominees be sworn in connection with their testimony. If each of you would raise your right hand, please. Do you solemnly swear the testimony you are about to give to the Senate Committee on Energy and Natural Resources shall be the truth, the whole truth, and nothing but the truth?

Ms. SCARLETT. I do.

Mr. MYERS. I do.

Mr. RALEY. I do.

The CHAIRMAN. Please be seated. Before you begin your statements, I am to ask three questions that we address to each nominee that comes before this committee. Let me ask the question and then I will ask each of you to respond to each of the questions. The first question, will you be available to appear before this committee and other congressional committees to represent departmental positions and respond to issues of concern to the Congress?

Ms. SCARLETT. I will.

Mr. MYERS. I will.

Mr. RALEY. Yes, sir.

The CHAIRMAN. The second question, are you aware of any personal holdings, investments, or interests that could constitute a conflict of interest or create the appearance of such a conflict should you be confirmed and assume the office to which you have been nominated by the President?

Ms. Scarlett.

Ms. SCARLETT. Yes, Mr. Chairman. My investments, personal holdings, and other interests have been reviewed both by myself and the appropriate ethics counselors of the Federal Government. I have taken appropriate action to avoid any conflicts. There are no conflicts of interests or appearances thereto, to my knowledge.

The CHAIRMAN. Mr. Myers.

Mr. MYERS. I know of no actual or apparent conflicts.

The CHAIRMAN. Mr. Raley.

Mr. RALEY. Mr. Chairman, my investments, personal holdings and other interests have, as with Ms. Scarlett, been reviewed by myself and with counselors within the Federal Government. I have taken appropriate action, and I know of no actual or apparent conflicts.

The CHAIRMAN. Okay. The final question, are you involved, or do you have any assets held in a blind trust?

Ms. SCARLETT. No.

Mr. MYERS. No, Mr. Chairman.

Mr. RALEY. No.

The CHAIRMAN. Well, thank you all very much. At this point, let me invite each of you to introduce any family members that you have in the audience with you. Ms. Scarlett.

Ms. SCARLETT. I have brought a whole retinue, Mr. Chairman. My husband, Jim Trotter, my daughter, Rachel, my mother, Virginia Scarlett, my sister, and our exchange student from Germany.

The CHAIRMAN. Thank you very much. Let's give them a hand.  
[Applause.]

The CHAIRMAN. Mr. Myers, did you have anyone in the audience you wish to introduce?

Mr. MYERS. No, Mr. Chairman. Events conspired against my family's ability to be here from Idaho today, so in their absence I would introduce to you my wife, Sue, and my two daughters, Kate and Molly, but they could not be here today.

The CHAIRMAN. We look forward to meeting them.

Mr. Raley, did you have members you wish to introduce?

Mr. RALEY. Yes, sir. I would like to introduce my wife Barbara, and my two daughters, Sarah and Janna.

The CHAIRMAN. We welcome them. Let's give them a hand.  
[Applause.]

The CHAIRMAN. At this point, let me invite the nominees to make any opening statement they like. Ms. Scarlett, why don't you start, and make your statement, and we will ask for each of the others to make their statements, and then we will have some questions.

**TESTIMONY OF P. LYNN SCARLETT, NOMINEE TO BE ASSISTANT SECRETARY FOR POLICY, MANAGEMENT, AND BUDGET, DEPARTMENT OF THE INTERIOR**

Ms. SCARLETT. Thank you, Mr. Chairman. I will summarize briefly the remarks I have submitted for the record. Mr. Chairman, Senator Murkowski, and members of the committee, it is a privilege and great honor to appear before you today as the President's nominee for Assistant Secretary of Policy, Management, and Budget at the Department of the Interior.

As Congresswoman Capps noted, I have been a bird-watcher since the age of 5, when my mother began taking me into the countryside. I have embraced a conservation ethic throughout my life, a passion for hiking and canoeing, and an appreciation for resources stewardship.

My other passion centers on public policy and governance, a passion that has translated into over two decades in a public policy career. I'm deeply honored President Bush has nominated me for a position that, should the Senate confirm my nomination, will allow me to bring together my personal interest in conservation with my professional interest in public policy.

The responsibilities of the Department of the Interior are awe-inspiring ones. They present a complex interface of environmental, economic, and cultural values. I understand the management challenges that result from this complexity. I am committed to bringing a problem-solving focus to these challenges.

Secretary Norton has outlined a vision for the Department of the Interior of conserving the wildlife habitat and wildlife resources of America's public lands, while maintaining America's prosperity and economic dynamism, respecting constitutional rights, and nurtur-

ing diverse traditions and culture. Her proposed tools for realizing these goals center around three themes, collaboration, communication, and consultation. I share that vision.

If confirmed, I will work in a bipartisan and cooperative manner with the committee and with all members of the House and Senate. I have a reputation among those who know me for being a good listener, and always respectful of the ideas and concerns of others. If confirmed as Assistant Secretary of Policy Management and Budget at the Department of the Interior, I will work with Secretary Norton, this administration, and this Congress to secure a safe environment, maintain the beautiful landscapes of our national parks, and prudently manage the resources of our public lands.

I'd like to thank those Senators and their staff with whom I have met so far. I look forward to continuing these relationships. Thank you for this opportunity to appear before you. I'd be happy to answer any questions you might have.

[The prepared statement of Ms. Scarlett follows:]

PREPARED STATEMENT OF P. LYNN SCARLETT, NOMINEE TO BE ASSISTANT SECRETARY FOR POLICY, MANAGEMENT, AND BUDGET, DEPARTMENT OF THE INTERIOR

Mr. Chairman, Senator Murkowski, and members of the committee, it is a privilege and great honor to appear before you today as the President's nominee for Assistant Secretary of Policy, Management, and Budget in the Department of the Interior. From age five—when my mother began taking me bird watching—to the present, I have embraced a conservation ethic, a passion for hiking and canoeing, and an appreciation for resource stewardship. My other passion centers on public policy and governance—a passion that has translated into more than two decades in a public policy career.

I am deeply honored that President Bush has nominated me for a position that, should the Senate confirm my nomination, will allow me to bring together my personal interest in conservation with my professional interests in public policy.

On behalf of the American public, the Department of the Interior is guardian of more than 20 percent of America's lands. It manages the world's greatest national park system—a system that connects us to a common landscape and shared national treasures. The Department works with more than 500 Indian tribes. It oversees public lands and offshore waters that produce 28 percent of the Nation's energy. It is steward over the wildlife, wilderness, resources and habitat that it conserves, manages, and protects for the American people.

These are awe-inspiring responsibilities. They present a complex interface of environmental, economic and cultural values. I understand the management challenges that result from this complexity. I am committed to bringing a problem-solving focus to these challenges.

Secretary Norton has outlined a vision for the Department of the Interior of conserving the wildlife, habitat and resources of America's public lands "while maintaining America's prosperity and economic dynamism, respecting constitutional rights, and nurturing diverse traditions and culture." Her proposed tools for realizing these goals center around three themes—collaboration, communication, and consultation.

I share her vision. For the past six years, I have led a project to research and document environmental programs for air, water, waste and land management that use incentives, cooperative decision-making, and performance measures to achieve environmental goals while maintaining prosperity and reducing conflict. My organization teamed with the Environmental Council of the States, an association of state environmental officials, to discuss these environmental innovations and expand our understanding of their promise. With my staff, I have developed a website clearinghouse of information on cooperative approaches to environmental management. This research provides me with a rich depth and breadth of knowledge about current experiences with cooperative approaches to conservation and resource management.

In her proposed 2002 budget, Secretary Norton included the establishment of a new landowner incentive and stewardship program to help Americans protect imperiled species, enhance habitat, and conserve fragile land. The proposed budget would also facilitate conservation partnerships through the Cooperative Endangered Species Conservation Fund and the North American Wetlands Conservation Fund.

The Partners for Fish and Wildlife Program would help foster voluntary partnerships for conservation purposes between the Fish and Wildlife Service and private landowners.

Through my own research, I have glimpsed the results that such cooperative approaches to resource management can bring. For example, on the Cosumnes River in California, the Bureau of Land Management is working with local nonprofit organizations and local farmers to enhance habitat along the river. This and other partnerships like it show the promise of pursuing environmental and economic goals in tandem. They show the promise of working with the private sector and voluntary associations to achieve environmental, economic and other community goals.

Good resource management requires more than new programs and adequate funding. It requires performance goals, relevant information, and accountability. I have spent much of my professional career working to understand best practices for performance-based budgets and management, public-sector contract management, and related tools of good governance.

My organization has conducted workshops for public officials across America on how to use these tools. Two years ago, I helped the U.S. Environmental Protection Agency develop a full-cost accounting guide for local waste managers. Most recently, we teamed with the National Academy of Public Administration, the Council for Government Excellence, George Washington University, and others to explore challenges and tools for improving government performance. I look forward to working with Secretary Norton to ensure that all the Department's programs are implemented efficiently and effectively.

I have always maintained a practical, problem-solving focus in my policy research. A decade ago, when I first suggested that local governments might want to consider using incentive-based fees for local solid waste service, a handful of cities used such fees. After helping the U.S. Environmental Protection Agency and others to explain how to implement these waste-reduction incentive programs, today more than 7,000 local governments have such programs. My research and writing to explain how to calculate recycling program costs received a special award for its clarity and usefulness.

My approach to the policy and management challenges at the Department of the Interior will emphasize Secretary Norton's 3 C's—collaboration, communication, and consultation. During my professional career, these three C's have shaped my approach to addressing land-use, conservation and other resource management policy issues.

If confirmed, I will work in a bipartisan and cooperative manner with the Committee, and with all members of the House and Senate. I have a reputation among those who know me for being a good listener and always respectful of the ideas and concerns of others. If confirmed as Assistant Secretary for Policy, Management, and Budget at the Department of the Interior, I will work with Secretary Norton and this Administration to secure a safe environment, maintain the beautiful landscapes of our national parks, and prudently manage the resources of our public lands.

Thank you for this opportunity to appear before you. I would be pleased to try to answer any questions you might have.

The CHAIRMAN. Thank you very much.

Mr. Myers, why don't you go ahead.

#### **TESTIMONY OF WILLIAM GERRY MYERS III, NOMINEE TO BE SOLICITOR, DEPARTMENT OF THE INTERIOR**

Mr. MYERS. Thank you, Mr. Chairman and members of the committee. As Ms. Scarlett said, it is a real honor to be here today, and I appreciate the confidence that the President has bestowed upon in me as his nominee to be the Solicitor of the Department of the Interior. I ask for your consent to the President's nomination.

I would like to briefly discuss my qualifications. First and foremost, I, too, am passionate about the mission of the Department. This passion was instilled in me as a young man, when I would often go afield for scouting, hunting, fishing, camping and the like. As it came time for me to pursue a profession, I decided on the profession of law, and specifically that law related to natural resources.

I attended the University of Denver College of Law because it offered a full curriculum in natural resources law. I took advantage of that, and have since specialized in public land law. Lawyers are particularly enviable in this society, because of the opportunity afforded to them to work in a variety of places and circumstances. I have taken advantage of those opportunities, having lived in and worked in Colorado, Wyoming, and now Idaho.

My career has taken me across the West to places such as Lemmon, South Dakota, Three Creek, Idaho, Barrow, Alaska, and Las Cruces, New Mexico. I have practiced in the seven-lawyer firm and the firm with over 200 lawyers. I have practiced in small towns and large cities, in this body as an assistant to Senator Alan Simpson, and as an assistant to the Attorney General of the United States. I have represented clients before the Justice of the Peace and the Justices of the U.S. Supreme Court.

Each of these experiences has personally benefitted me, and I think made me a better lawyer. I look forward to working closely with Secretary Norton on the President's initiatives for public lands. I will mention a few of those briefly.

First is conservation partnerships. It's my experience that people who know the landscape best know its challenges and unique opportunities and how to conserve it. Indeed, the law recognizes that every parcel of land is unique by providing special so-called specific performance remedies for persons aggrieved in land transactions.

While in Idaho, I had the opportunity to serve as chairman of a task force appointed by former Senator, now Governor Kempthorne to consider ways to manage Federal lands in Idaho, and we consistently learned in the course of that process that those who are closest to the land, regardless of their point of view, knew best how to conserve it.

Second, the maintenance of our national parks. It's been my honor and privilege to also be a volunteer for the National Park Service. I have volunteered in parks across the country, including Yellowstone, Yosemite, Great Smoky Mountains, Catocin Mountain Park, and Manassas National Battlefield Park. In that process, I've had an opportunity to see first-hand the maintenance backlogs that afflict our national parks. Many of those maintenance problems are most severe in the back country, perhaps because most of the maintenance dollars go to the front country, where most of the people traverse the parklands.

However, the maintenance of the parks' infrastructure for the enjoyment of visitors, support of NPS personnel, and protection of the resources, is crucial.

Third is balanced use. Like most Americans, I support multiple use of the departmental lands. At times, those uses are aesthetic or recreational, such as sunset on Half Dome, the smell of sagebrush after a spring rain, or the bugle of a bull elk. At times, those uses are commodity-based: food and fiber from livestock grazing, lumber and paper from forests, gasoline from oil production, or electricity from coal and hydroelectric generation.

The fundamental challenge is to balance and sustain these uses for future generations, just as our generation has benefitted from that balancing act by previous generations.

And lastly, Indian schools. I do not now fully appreciate the breadth and depth of the problems associated with schools for American Indian children, but I do know the importance of a good learning environment for the education of my children, and from what I have observed, the problems in Indian country are apparent to anyone willing to take a look. The President and Secretary are to be commended for prioritizing solutions to address a legacy of neglect.

If confirmed, I will bring the whole of my experience to the challenges and experiences facing the Department. I will do my best to uphold the honorable tradition of the Solicitor's Office to vigorously represent my clients, to do so ethically and responsibly, and to expect the same from those who work with me.

Thank you, Mr. Chairman. I appreciate the invitation to testify, and I will answer any questions you may have.

[The prepared statement of Mr. Myers follows:]

PREPARED STATEMENT OF WILLIAM G. MYERS III, NOMINEE TO BE SOLICITOR,  
DEPARTMENT OF THE INTERIOR

Mr. Chairman, Senator Murkowski and members of the committee, I am honored to appear before you today as President Bush's nominee to be the Solicitor of the Department of the Interior. I ask your consent to the President's nomination. As the chief legal officer for the Department, the Solicitor plays an important role in assisting the President and the Secretary in the management and use of federal lands. I appreciate this opportunity to briefly present my views and qualifications for this office.

First and foremost, I am passionate about the mission of the Department. This passion was instilled early in my life through innumerable trips afield for scouting, hunting, fishing and otherwise enjoying the great outdoors. In those days, I did not know or particularly care whether my activities were on federal, state, local or private lands. Not until I moved west did I begin to appreciate the differences. I chose to attend the University of Denver College of Law because it offered a strong natural resources curriculum. I took full advantage of those offerings and over time have specialized in public land law.

Lawyers have the enviable opportunity to work in a variety of places and circumstances. I have had the great pleasure of living in three western states and plying my trade across the West in places such as Lemmon, South Dakota, Three Creek, Idaho, Barrow, Alaska, and Las Cruces, New Mexico. I have practiced in a seven-lawyer firm and a 200-plus lawyer firm; in small, medium and large cities; in the United States Senate and as an assistant to the Attorney General of the United States. I have represented clients before the Justice of the Peace and the Justices of the Supreme Court. Each of these experiences has enriched me personally and, I think, made me a better lawyer.

I will bring these experiences to the position of Solicitor. The Constitution, statutes and regulations that bind the Department must be faithfully executed. The Solicitor must advise the Secretary and the various offices and bureaus of the Department on a wide array of issues. The Office of the Solicitor currently handles over 2000 administrative and judicial cases. This work is performed by nearly 400 attorneys and staff in Washington and 17 other offices across the United States. The attorneys represent the Department in administrative and judicial litigation, with and without the assistance of the Department of Justice. In addition, the attorneys prepare formal legal opinions; review draft legislation, regulations, contracts, and other documents; and provide legal advice in a wide variety of circumstances. The Department's jurisdiction over 450 million acres of America assures no lack of important and fascinating legal challenges.

I look forward to working closely with Secretary Norton on the President's initiatives for America's public lands, some of which are highlighted below.

*Conservation Partnership.* Conservation works best when those who are closest to the land and water are intimately involved. People who know the landscape often know best its unique challenges and opportunities and how to conserve it. Indeed, the law has long recognized that every parcel of land is unique by providing special, "specific performance" remedies for persons aggrieved in land transactions. Partnerships between the Department and those with local

knowledge can maximize conservation efforts and results. I have often observed this phenomenon, most recently as chairman of a diverse task force in Idaho appointed by Governor (and former Senator) Kempthorne. The task force was chartered to consider management alternatives for federal lands within the state. Over the course of 17 months, we consistently learned the most about federal lands from citizens who conserved, recreated on, worked on, or neighbored federal lands. And not surprisingly, they were the ones most interested in our efforts.

*Maintenance of our National Parks.* I have volunteered many hours of service to our national parks, including Yellowstone, Yosemite, the Great Smoky Mountains, Manassas National Battlefield Park, and Catoctin Mountain Park. Backcountry maintenance problems on trails, at ranger cabins and campsites often were more acute, perhaps because scarce resources were devoted primarily to the high traffic areas. I enthusiastically support the President's plan prioritizing maintenance of the parks' infrastructure for the enjoyment of visitors, support of park service personnel, and protection of the magnificent natural resources.

*Balanced Use.* Like most Americans, I support multiple use of Departmental lands. At times, those uses are aesthetic or recreational—sunset on Half Dome, the smell of sagebrush after a spring rain, the bugle of a bull elk, the solemnity of a battlefield. At other times, those uses are commodity-based—food and fiber from livestock grazing, lumber and paper from forests, gasoline from oil production, electricity from coal and hydroelectric generation. The fundamental challenge faced by all land management agencies is to balance and sustain these uses for the benefit of future generations—just as our generation has benefitted from the work of those who have gone before us. President Bush and Secretary Norton recognize and accept this challenge. The Solicitor's Office can help chart a course in compliance with scores of federal statutes and regulations.

*Indian Schools.* I do not now fully appreciate the breadth and depth of the problems associated with schools for American Indian children. But I know the importance of a good learning environment for the education of my children. And from what I have observed, the problems in Indian Country are apparent to anyone willing to take a look. President Bush and Secretary Norton are to be commended for prioritizing solutions to address a legacy of neglect. I stand ready to lend the assistance of the Office of the Solicitor in pursuit of those solutions.

If confirmed, I will bring the whole of my experience to the challenges and opportunities facing the Department. I will do my best to uphold the honorable tradition of the Solicitor's Office, to vigorously represent my clients, to do so ethically and responsibly, and to expect the same from those who work with me. Over the years, highly skilled and effective mentors have taught me a great deal about the practice of law. The attorneys in the Office of the Solicitor are extremely knowledgeable in their chosen fields and I look forward to continuing my legal education through their counsel and advice.

Thank you, Mr. Chairman, for the invitation to testify today. I would be pleased to answer any questions.

The CHAIRMAN. Thank you very much.

Mr. Raley, why don't you go ahead with your statement.

**TESTIMONY OF BENNETT WILLIAM RALEY, NOMINEE TO BE ASSISTANT SECRETARY OF THE INTERIOR FOR WATER AND SCIENCE**

Mr. RALEY. Thank you, Mr. Chairman, Senator Murkowski, members of the committee. I first wish to thank those of you that I have had the opportunity to meet with, or to meet with your staff. I hope that that will be the first of many, because I know how important it is to communicate with you and your staff and with the House of Representatives.

It is the greatest honor of my professional career to have been nominated by the President to serve as Assistant Secretary of the Interior for Water and Science. If confirmed by the Senate, it will be perhaps—it will be undoubtedly the greatest challenge that I will ever have.



It is also a particular honor for me, because, Senator, if you will allow me, I sat in the chairs behind you, not in this room but in others, and I wish to take time to recognize your staff. I honor what each of you do. One of the things that I saw was—I happened to be back here when I happened to work for someone in the majority, and I happened to be back here when I worked for someone in the minority, and both times I found a culture of respect that I will try to replicate as I move into this job, if confirmed by the Senate.

You have met today—the reason why my wife, Barbara, and I believe in public service. When we moved to Washington 10 years ago to work for Senator Brown, Sarah was 3, and Janna was 6 weeks old. We have tried for their entire lives to make our democracy alive and real for them through participation, to show them the value of fierce debate and honest consensus, and to convince them that, as Teddy Roosevelt said, it is far better to strive for great things and lose, than to live in a grey twilight of neither victory nor defeat.

Our words would be hollow if we were not willing to serve ourselves. I have been involved in debates on water policy since I was a child in southwestern California. Senator Campbell, 33 years ago I attended meetings on the Animas-La Plata Project. I was young at the time, far younger, and I wish I had the wisdom that should have come with the 33 years. I have learned the hard way that things are not as simple as they seem, that good public policy requires patience and fairness.

In the course of my 18 years of practicing law, and I like to litigate, I enjoy it, I have learned that cooperation is preferable to litigation, and that communication is more productive than confrontation. 10 years ago, I was struck by the dignity of the debate in the Senate, by the fact that incredibly contentious issues could be discussed and resolved without personal rancor, and by the need to be willing to work side-by-side with your opponents to find common ground.

If I am confirmed as Assistant Secretary, I know that the issues that I will address are both complex and contentious. In particular, the task of a reconciliation of the requirements of the Endangered Species Act, with the protection of water rights and the prerogatives of States over lands and waters within their boundaries, is difficult, but not impossible.

As proof, I point to the Upper Colorado River endangered fish recovery program as an example of what is possible with cooperation. I am proud to have been a participant in that effort, and I hope that that success can be replicated elsewhere.

Senator, I am also proud of my service in your great State of New Mexico as Special Assistant Attorney General for the Rio Grand and Pecos River litigation. I was particularly honored by the words of one of my opponents in that litigation, who was quoted as saying that I played a constructive role in the settlement negotiations and have been willing to look for solutions that both protect private property and meet the needs of the listed species.

Ten years ago, Secretary Norton and I helped Senator Brown, then Congressman Campbell, and then Congressman Allard to achieve what many thought was impossible, and that was to break

what had been over a 10-year deadlock over the designation of wilderness in Colorado, and find a way to designate approximately 700,000 acres of wilderness in Colorado in a way that also protected water rights and State authority. I would not be before you today if I did not believe that principled compromises like that represent far better public policy than contention and litigation.

If confirmed, Senators, I will consult with you and your staffs. If confirmed, I will communicate with your constituents and, if confirmed, I will look for cooperative approaches that will enable us to continue the proud tradition of conservation.

Thank you for your time. I would be pleased to answer any questions members of the committee have.

[The statement of Mr. Raley follows:]

PREPARED STATEMENT OF BENNETT W. RALEY, NOMINEE TO BE ASSISTANT  
SECRETARY OF THE INTERIOR FOR WATER AND SCIENCE

Mr. Chairman, Senator Murkowski, and Members of the Committee, it is a great honor to be before you today. When President Bush and Secretary Norton announced their intent to nominate me to serve as Assistant Secretary for Water and Science, Department of the Interior, I pledged that if confirmed, I would repay their trust with honesty and hard work, and with an unceasing search for the common ground that reflects the desire of the American people for fair and balanced solutions to the complex water and energy issues that we face as a nation. I also expressed my belief that protection of property rights, respect for our environment and fulfillment of the trust responsibility of the United States to Indian tribes cannot be viewed as irreconcilable goals. I believe that our obligation to future generations requires that we protect each of these elements of our heritage.

I hold these beliefs notwithstanding the fact that I have been involved in water issues since I was a child. In fact, my first exposure to the complexities of water policy was with my father 33 years ago, attending meetings where the subject of discussion was proposed Reclamation projects in Southwestern Colorado.

More recently, I have served as an attorney for the Northern Colorado Water Conservancy District since 1983. This District is the local sponsor and repayment entity for the Colorado-Big Thompson Project. In that capacity I have addressed a wide range of issues, including over a period of many years the development of collaborative programs that meet the needs of the Endangered Species Act in a manner that protects water rights and recognizes a state's authority over its water resources.

I also have had the honor, Mr. Chairman, of serving the great State of New Mexico for the past two years as a Special Assistant Attorney General in federal court litigation related to water rights and the Endangered Species Act in the Rio Grande and Pecos Rivers.

Through this experience, I know full well that there are no easy answers or quick solutions to the complex water and environmental issues that I will address if I am confirmed. I have also learned that patience is perhaps the greatest virtue in the search for creative solutions to difficult problems. For example, the Upper Colorado River Endangered Fish Recovery Program has been 15 years in the making. I am proud to have played a part in this cutting-edge effort to avoid a conflict between attainment of the goals of the Endangered Species Act and the protection of water rights and state water allocations. Likewise, I have supported and participated in years of work to develop a program that will achieve ESA-related goals in the Central Platte through a Cooperative Agreement between the federal agencies and the States of Nebraska, Wyoming, and Colorado.

My participation in these efforts to find cooperative solutions and my short service on United States Senate staff have proved to me that it is almost always possible to find common ground so long as people are committed to resolving complex and even highly contentious issues in the context of the laws and process of our democracy. My experience on Senate Staff also has demonstrated that it is possible to disagree without being disagreeable, to join with someone on an issue even though they oppose you on another issue, and to serve the citizens of the United States with dignity.

If I am confirmed, I am particularly proud to have the opportunity to serve with the United States Geological Survey and the Bureau of Reclamation. Throughout my career I have considered the Geological Survey to be the premier science agency

in the Nation, and if I am confirmed I will work to protect the scientific integrity that is an absolute prerequisite for good science. Their expertise is frequently sought by those engaged in the most contentious and difficult to resolve conflicts over resources. In addition, their work to help predict and mitigate the effects of hazards such as earthquakes, volcanoes and floods has enabled many communities to weather devastating natural disasters with minimal loss of life and property. I look forward to learning more about the USGS' scientific capabilities, and to being a strong advocate for science-based decision-making in the Department of the Interior.

As I mentioned earlier, I have grown up in the Reclamation community. I believe that the legacy of Reclamation's century of service to the Nation is reflected in the strong families and vibrant communities that exist in part because of the Nation's investment in the future through the Reclamation Act. This legacy is worthy of protection. I refuse to accept the proposition that it is necessary or appropriate to destroy these families and communities in order to achieve other national goals. I also refuse to accept the proposition that the protection of the environment is not equally important—I love the West because of its environment and know that it must be protected for future generations.

Finally, I share the commitment of the President and Secretary Norton to conservation of our natural resources. I know from personal experience that broad consultation produces better decisions, that good communication avoids needless conflicts, and that cooperation is preferable to litigation. I promise you that if confirmed, I will consult with you on issues that are of interest to this Committee, I will communicate with your constituents, and I will search for cooperative solutions to the complex issues that will be within my responsibility.

Thank you for the opportunity to appear before you today.

The CHAIRMAN. Thank you very much. Thanks to all three of you for your statements. I will start with questions and we will take 5 minutes each and go back and forth, and give everyone a chance to ask their questions.

Ms. Scarlett, let me ask you first. You have spent your entire professional career at the Reason Foundation. This is a foundation known for its libertarian views. I believe that is a fair characterization. You have championed free market solutions, limited government and individual freedom. Unlike EPA and other regulatory agencies, the Department of the Interior's mission is not to regulate private enterprise, but to protect and conserve the Nation's resources and heritage. How do you see that libertarian philosophy meshing with the Department's mission?

Ms. SCARLETT. Thank you, Senator. Actually, I am a person that avoids labels. I would look at myself more as having a problem-solving focus, but one that tries to work cooperatively, and with the marketplace to address problems.

I have spent the last 6 years in a partnering project with the Environmental Council of States, the association of State environmental regulators, that project looking at cooperate approaches not only to addressing pollution problems, but also land management problems. Most recently, I visited the Kusumas River in northern California, looked at a project there where the Bureau of Land Management is working in partnership with the Nature Conservancy and with private farmers to develop restoration endeavors that work in tandem with allowing their farmers to continue their farming operations.

I view that kind of opportunity as a model, one that can be replicated. In fact, I have been heartened as I have looked at the Department of the Interior and its activities, at how many little seeds or kernels of these cooperative endeavors are out there, and it would be that approach that I would bring to the table, I believe.

The CHAIRMAN. Mr. Myers, let me ask you if there Solicitor's opinions that you are aware of that you believe need to be revisited and changed.

Mr. MYERS. My predecessors, both the immediate predecessor and his predecessors, have issued a number of Solicitor's opinions over the years. I have no intention of going into office and immediately reviewing former Solicitors' opinions. I know that certain members of this committee and of the Senate and the House and elsewhere have interest in those opinions, and as those are brought to me we will take a look at them as the case should arise, but I have no agenda for systematically reviewing individual opinions to see whether they are good, bad, or otherwise.

The CHAIRMAN. Could you agree to give members of our committee some advance notice before you reverse Solicitors' opinions? I think one of the sources of conflict we have had here in the past is when Solicitors would haul off and reverse a fairly well-established position without any kind of prior discussion. Is that something you would be willing to do?

Mr. MYERS. I will look into that, Senator. I appreciate your concern. Honestly, I do not know enough yet about the process of even issuing a Solicitor's opinion to tell you what that process entails and where the opportunities are to pause and reflect, but I think it is a fair request, and I would be happy to work with you and your staff on that.

The CHAIRMAN. Okay. Thank you.

You challenged the Clinton administration rangeland reform rules before the Supreme Court and, as I understand it, the Court upheld those rules in a nine to nothing decision. Do you have any desire to go back and modify, or repeal those rules at this point, or are you willing to live with those rules as they were issued?

Mr. MYERS. The Supreme Court's decision was a pretty interesting one, actually, because I think what happened was that in chambers they came to a resolution based on the position advocated by the Solicitor General on behalf of the Secretary at the time.

The ranchers who brought that litigation were greatly concerned about something known as grazing preference, and the loss of preference, and in the oral argument the Solicitor General said it was not the intention of those rules to affect grazing preference. That was a great relief to my clients at the time, and I think a relief probably to the Justices, and with that assurance, and they noted it in the majority opinion, they said that they would rule in favor of the Department's position.

There are other issues that were raised that are still of concern to ranchers, but again, I have no intention to go in and do a wholesale review of that set of regulations. There were some 70 pages in the Federal Register at the time of publication. Some of them probably should be revisited simply because of the passage of time. They have now been implemented for a number of years, and some are working better than others, but again I have no particular ax to grind as I go into this office.

The CHAIRMAN. One of the issues that has been quite contentious in my State involves the Pueblo Sandia claim to the west face of the Sandia Mountain in New Mexico. Are you familiar with the

proposed settlement agreement that the Pueblo and Department of the Interior and others have entered into to settle that, and if so, do you have a position on that?

Mr. MYERS. I can't answer your question, Senator. I know there is a settlement proposal. I have not read it.

The CHAIRMAN. Let me ask one final question of Mr. Raley. Last year, you testified before the House Resources Committee that you believe the Endangered Species Act should be repealed, and that Congress should not encroach on private property and the prerogatives of States to protect endangered species. Is that your view, and if so, what would you intend to do to pursue that point of view?

Mr. RALEY. Senator, if I recall my testimony correctly, the point was, is that in a perfect world the act should be repealed and replaced with a process that does not encroach on private property or States' prerogatives. I then went on and recognized that that was simply not politically feasible, and that the best course was to make incremental changes.

My thought at the time, Senator, was on a couple of points. First of all, I was very frustrated at the time with the fact that we had just negotiated between three States, the Federal community, and the environmental community a process to address endangered species on the Platte River in Colorado, and yet we had to turn around and start NEPA, and it was going to be a process with checks and balances, and I thought, quite frankly, that was a waste of money.

Likewise at the time, I was struggling with the inability to reconcile the relationship of critical habitat designation with section 7, with section 9, with the listing process, and I thought that those portions could be properly clarified in a way to where the act did more for the species and less for attorneys like myself.

So if I unartfully made the point that in a perfect world this body, with the knowledge we have over 30 years, I have no doubt could come up with a more effective program, my intent was just to make the point that the act needed revision, and that incremental approaches were the most effective.

The CHAIRMAN. Senator Craig, why don't you go ahead.

Senator CRAIG. Thank you very much, Mr. Chairman.

Ms. Scarlett, we have not met, to my knowledge. I am aware of you, and I have looked at your bio, and I would enjoy reading some of your articles. I'm not quite sure I would have time to read them all, but unlike a frustration that might have arisen out of the chairman's expression that you were a libertarian, I find that mighty exciting, and in that context, while I have not read it, let me ask you what the article that you wrote for the *Santa Barbara News Press* on August 2000 said.

Now, I will give you the title of it, and I should never ask a question that I do not understand the answer coming forth, but I do not. I am out fishing at the moment, so please explain the article that was entitled, "Regional Government versus Localism." Do you remember that?

Ms. SCARLETT. Yes, I do remember it somewhat. As you note, I have written, I think regrettably, an awful lot of stuff.

Senator CRAIG. We have the bios of everyone up here, and 90 percent of it is yours.

[Laughter.]

Ms. SCARLETT. I apologize for that. Had I known I was going to be here, I would have been much less hefty with my pen.

One of the issues we face in Santa Barbara County is challenges relating to traffic congestion, as well as land use that go beyond the borders of the city of Santa Barbara itself, and because of those cross-boundary challenges, there has been a proposal or suggestion that we move to a regional government; that is, that rather than the city having its own governance of those issues separate from the county, and separate from related cities, that one move to a regional government.

My organization has done a fair amount of research on regional governance, and it is not clear that by going to a larger scale you necessarily get better service to the citizens, nor at lower cost. In that article, I argue instead it was better to keep the smaller sized government that allows for better citizen access, but there are mechanisms such as joint powers agreements that allow for coordination. That was the major gist of the article.

Senator CRAIG. One of the things I try to foster here in policy as a reaction to the rather top-down style of management for the last several decades as it relates to public land resources is a local collaborative approach for dealing with issues.

I think Mr. Myers mentioned that there is a tremendous interest and a good conservation ethic at the local level, if they're allowed to be participants. In your role that you will soon play with the Department of the Interior, do you see a role for local participants and stakeholders to be a part of the decisionmaking process in a collaborative format?

Ms. SCARLETT. Yes, Senator, actually I see that as a hallmark of what the Secretary of the Interior is attempting, along with this administration, to promulgate, and one of the reasons I believe that Secretary Norton has asked me to join her is that I have spent 4 or 5 years now documenting on a web site a number of these local cooperative approaches to environmental protection, hoping to bring some of those ideas into the Department.

I am pleased to note that there are already quite a few such examples occurring, perhaps at small scale, that can be worked with and built upon.

Senator CRAIG. Well, I will look forward to working with you, because I think that conflict that we have experienced out of the local level with public land management and resource management over the last several decades has an opportunity to be lessened if we involve all parties in decisionmaking, instead of the idea that a Solicitor or Secretary knows better how to run the local unit.

Mr. Myers, we have just finished with a Solicitor who not only chose to change a lot of opinions, but became an advocate in his role as Solicitor from his private experience and private role. It was quite obvious to me and others on our committee by some of his decisions that he was intensifying his advocacy role. In fact, about half-way through the second term of the Secretary, the Secretary mentioned that he really did not need this committee or Congress, that he could govern by regulation or by decision of the Solicitor.

The Solicitor is the attorney of the Department of the Interior and the Secretary, and I would hope that you approach that role as a consultant and an attorney, and not an advocate. While cer-

tainly you can make your recommendations known to your Secretary and to this committee, and you should, I think all of us were frustrated, and the public was frustrated over the past several years that we had a Secretary of the Interior and his attorney that chose to take a lone course, if you will, and not involve the public process or the public policymakers. How would you respond to those comments?

Mr. MYERS. Well, Senator, I can only tell you my approach to those issues and that is as an attorney in private practice. As such, I am responsible to my clients. I have an ethical duty to represent them vigorously, but at the end of the day, they are the clients, and they tell me what they want to do.

I might recommend litigation, I might recommend settlement, I might recommend alternative dispute resolution, but I give them the best I know in the way of the law and my understanding of the facts, and tell them what those are, and let them tell me what they want to do. That will be my approach to this job. The Secretary will be my primary client. I will present her with the law and the facts as I understand them, and then let her decide, and she has told you and the public she fully intends to involve State and local communities in her decision process. I am sure that is where we will end up.

Senator CRAIG. Mr. Chairman, my time is up. I will come back to Mr. Raley in the next round. I would say to you that if there is a list of Solicitor opinions that have been changed, I have a long list, and as I submit them to Mr. Myers in the future, I will also submit them to you, Mr. Chairman.

Thank you very much.

The CHAIRMAN. I am shocked to hear there is anything you disagree with.

[Laughter.]

The CHAIRMAN. Senator Akaka.

Senator AKAKA. Thank you very much, Mr. Chairman. Thank you for this hearing. I would like to add my welcome to the nominees and their lovely families, and to congratulate the nominees for their outstanding credentials that they bring to this hearing. I want to thank Ms. Scarlett and Mr. Myers for taking the time to meet with me.

I particularly have questions for Ms. Scarlett and Mr. Myers, and for Mr. Raley I want to say, as you may know, last year legislation was passed making Hawaii a reclamation State. Because of that, I look forward to working with you on the study of Hawaii's reclamation needs and drought assistance planning.

My questions' and I want to ask you questions for the record, have to do with Public Law 103-150, which was signed into law in 1993. In summary the Apology Resolution apologizes to Native Hawaiians on behalf of the people of the United States for the overthrow of the Kingdom of Hawaii on January 17, 1893, and calls for a reconciliation between the United States and Native Hawaiians.

In 1999, consultations were held in Hawaii between representatives from the Departments of the Interior and Justice and Native Hawaiians. On October 23, 2000, the Departments released a report about the public consultations, with recommendations for additional steps in the reconciliation process.

My question is, the reconciliation process is an incremental process of dialogue between the United States and Native Hawaiians to resolve a number of longstanding issues resulting from the overthrow of the Kingdom of Hawaii. The Department of the Interior has had the lead in this process, as the agency that deals with indigenous peoples within the United States jurisdiction. I look forward to working with you on the reconciliation process, and I would like to know your thoughts regarding the continuation of this important process between Native Hawaiians and the United States.

I would like to hear from Ms. Scarlett and Mr. Myers.

Ms. SCARLETT. Thank you, Senator. Thank you very much for meeting with us the other day. I very much appreciated it.

My exposure to the issues you raised the other day were in fact my first exposure. I have not yet had an opportunity to read the reconciliation report and its proposals, but certainly I look forward to doing that, and very much look forward to working with you on that incremental process.

You described working with the Native Hawaiians and the Department of the Interior and other relevant parties to pursue that process. With respect to specifics, until I have read the report and know the details of how to proceed, I could not give more than that, but I certainly look forward to working with you on that.

Senator AKAKA. Mr. Myers.

Mr. MYERS. Senator, I find myself in the same position as Ms. Scarlett, in that I have not had a chance to read the actual recommendations.

I do understand and appreciate your concern, obviously, on behalf of your constituents and on behalf of Native Hawaiians. I also appreciate the concern of indigenous people in the continental United States, and the involvement of American Indians in these issues, and of the non-Indian communities as well, and so it is clearly a complex situation. It is one that needs to be addressed, and I commend you for bringing it to the attention of the Senate, and I will commit to looking into it when I get there, if confirmed.

Senator AKAKA. Thank you. One of the recommendations of the report, released October 23, 2000, is the establishment of an office within the Department of the Interior to focus on issues involving the indigenous peoples of Hawaii, Native Hawaiians. The authors will continue to facilitate the reconciliation process, and will assist Native Hawaiians in addressing the political and legal relationship between Native Hawaiians and the United States.

The office would not serve as another Bureau of Indian Affairs, but would function similar to that of the Office of American Indian Trust, as a liaison between the community and the Federal Government.

My question is, what are your thoughts regarding the implementation of this recommendation?

Ms. SCARLETT. Thank you, Senator. Again, I have not had the opportunity to discuss with either Secretary Norton or the rest of her staff that particular recommendation, but I certainly look forward to working with you and exploring the opportunities for pursuing those reconciliation interests and that dialogue with the Native Ha-



waiians, and exploring whether establishment of such an office would be possible.

Senator AKAKA. Let me ask another question. The Office of Insular Affairs, which deals with U.S. territories, falls under your jurisdiction. Historically, the Federal policymakers in Congress and the executive branch have addressed territorial issues in a bipartisan manner, and I am hopeful that we can continue this tradition under the Bush administration.

What is your position on maintaining the Interagency Group on Insular Areas, and what efforts will be undertaken by the administration to ensure that political appointees charged with territorial issues at the White House and the Office of Insular Affairs will be chosen based on their qualifications and knowledge on territorial issues?

Ms. SCARLETT. Thank you, Senator. I would put a premium on all that I do in the Department of the Interior on coordination, interagency as well as within the agency, the relevant departments, so the theme that you put forth is very much consistent with how I would hope to manage those matters.

Likewise, your hope that we would continue in a bipartisan manner those dialogues would be very much consistent with my desire to be very inclusive, and have cooperative consultations.

Certainly, I also share your desire to ensure that very, very well-qualified people are put into the places of various positions as they come up. I have not had the opportunity to work on that specific issue and the personnel as it relates to that issue, but certainly those themes would guide my decisionmaking.

Senator AKAKA. Thank you for your responses. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator Campbell.

Senator CAMPBELL. Thanks, Mr. Chairman.

Dr. Scarlett, when we first came in, my friend Senator Craig, who stepped out for a moment, and I were going through your very extensive resume, and we were musing about what some of the articles could have been about that you wrote, Buying Green, Recycling Markets, Clear Thinking About the Earth, the Bush Environmental Record, and I have to tell you that we were speculating what all that could mean from a philosophical standpoint, but the more you talk, the better we like you. I want to tell you that.

I have no problem with libertarians, by the way, Mr. Chairman. We have got a lot of them in western Colorado, as you might guess. Some people around here believe in a bigger Federal Government, some believe in a smaller Federal Government, and to my knowledge, they believe in no Federal Government, and there are places in my State as well, as the chairman states, where that is a prevailing opinion, as you might guess, in some places.

But I just wanted to ask you one question, because I was interested in some of the groups you belong to. Could you tell the committee, what is FREE?

Ms. SCARLETT. Yes. That stands for Foundation for Research on Economics and the Environment. It is a nonprofit organization that works on environmental economics, the study of the environment, application of economic concepts to environment. They do seminars

for journalists, for what they call environmental entrepreneurs, that is, nonprofit environmental groups, and also they have Federal judges' programs on economics for environment.

Senator CAMPBELL. Is it a research group, a think tank?

Ms. SCARLETT. Yes it is.

Senator CAMPBELL. Based in Boise?

Ms. SCARLETT. That is correct.

Senator CAMPBELL. That is my only question for you, Dr. Scarlett.

Ms. SCARLETT. One clarification. I am actually not doctor. I am what is called ABD, all-but-dissertation. I completed my coursework and exams.

Senator CAMPBELL. I apologize for that. That is a better title than some of us have. I was thinking about asking the chairman to take a recess so we could read up on this extensive background you have had, but you have been very, very prolific.

I also wanted to ask, I have no questions for Mr. Myers, but for Bennett Raley, Bennett, you are very familiar with the Animus-La Plata, as well as the Black Canyon of the Gunnison, having worked here. You know that we passed again last year another Animus-La Plata bill, which we hope is going to finally settle the Ute Indian water rights question. Senator Bingaman was a prime cosponsor of that bill, and we worked very hard on that and got that thing passed.

It is my understanding already the opponents of that project are gearing up for a fight in court, I suppose to use the Endangered Species Act again as some kind of a defense, but they are going to try and stop it.

Those of us, including Senator Domenici, have worked years and years on this. It provides water for both of our States, as you know, and I would hope that if that does come to court you are going to be willing to take an aggressive position on that and try and get that thing moving, because over and over, the objects of the opponents of that project is to simply drive up the cost until we cannot build it, you know that as well as I do, and it is going to be very, very important for both of our States of New Mexico and Colorado.

One other thing, too, you are familiar with the waning days of the Clinton administration. There was a water quantification of the Black Canyon of the Gunnison done. When we passed that bill last year, I thought the thing was pretty clear, because it did specify that the decisions had to be done in the State water court, that there was no—although there is an implied Federal reserve right, there is no specific quantified Federal reserve water right in that bill, and we took a long time to write it to try to give direction, again, to the courts about any question about water.

I understand there has been over 300 comments of opposition to the final decision that the Clinton administration did. Have you studied that, or had any involvement at all in that, since you have been out in the private sector?

Mr. RALEY. Senator Campbell, yes, I have had involvement. In fact, my firm filed one of those statements of opposition, so as a consequence I will be recused from addressing that issue and others in the Department, starting with—Mr. Myers, will handle that, because I will be unable to participate.

Senator CAMPBELL. You will be recused from having anything to do with the Animus-La Plata because in the past you worked in support of that objective?

Mr. RALEY. No, sir, not to my knowledge. I believe there will be no recusals for the Animus-La Plata project, because I have had no official involvement with that project.

Senator CAMPBELL. I see. Thank you. No further questions, Mr. Chairman. Thank you.

The CHAIRMAN. Thank you.

Senator Thomas.

Senator THOMAS. Sort of in a broad sense, Ms. Scarlett, we have been working for sometime to sort of strengthen the business plan approach, and specifically in the Park Service, and the idea of bringing in more private input with concessionaires and the business operations. What is your notion?

I see you are talking about management here, and that is one of your issues. How would you deal with private sector input, and business plans and so on, for agencies?

Ms. SCARLETT. Yes, thank you, Senator. Fortunately, one of the things my organization has focused on for 20 years is, in fact, what we call good governance, and bringing business management practices to government, so I have a lot of familiarity with performance-based budgeting, activity-based costing, and other rather mundane-sounding governing tools, but very important. I would hope to bring some of my knowledge on those matters to the National Park Service, working with the Director, working with the Secretary of the Department of the Interior to help infuse some of those tools.

I am pleased to note in my initial review of what is going on in the Park Service major attempts to improve the business practices. There is a way to go, particularly in terms of contract management. Fortunately, I do have familiarity with contract monitoring and best practices, and would hope to bring that experience to the table.

Senator THOMAS. That is good. Obviously we would encourage the Department to maintain the resources, but there is such heavy visitation.

Now, Mr. Myers, it seems as if many of the decisions in public lands, for example, are driven by what some people believe are frivolous suits and, indeed, these are never pursued and never defended, but they just go ahead and make that decision. How would you handle this sorting out of suits as to what the Justice Department ought to go forward with? What is your view of that?

Mr. MYERS. Frivolous litigation is a curse on our legal system today, because it clogs up an already overtaxed judiciary. Many cases will come before me, and they will be numerous—in fact, the docket of the Solicitor's Office is somewhere over 2,000 cases, with administrative and judicial litigation. I think it will be apparent those which are of value and should be defended by the United States, or prosecuted by the United States.

I look forward to working with my colleagues at the Department of Justice. I had a chance to work in that Department for Attorney General Thornburgh, and obtained in that process a pretty good overview of the departmental workings. I understand the relationship between the Department of Justice, as the litigator for the

United States, and the Department of the Interior, which in my case will be the client agency. But as the client, I intend to make fully known my opinions on behalf of the Department of the Interior to colleagues at Justice, to make sure that we defend those cases which should be defended, and we prosecute those cases which should be prosecuted.

Senator THOMAS. It is kind of scary to think that policy decisions are made based simply because somebody filed a lawsuit.

Mr. Raley, you will be involved in water. It kind of seems like over the last several years that EPA has had more to do with water management than Interior, and when you talk, for instance, about the clean air action plan, which many believe is more designed to manage the land than it is the water, how do you propose to work with EPA?

Mr. RALEY. Senator, closely, is how I propose to work with them. Secretary-designee Griles has made it clear to us that cooperation should be the byword with sister agencies and, if confirmed, I will spend time with EPA, the Corps, the Department of Energy, because of their involvement in WAPA and the power marketing agencies, because I know from my private experience when the Federal Government doesn't speak with one voice it's somewhat frustrating to be in the outside world, and I'll do my small part to communicate with the other agencies.

Senator THOMAS. Well, it seems sometimes a little frustrating that agencies such as Interior and others sort of have plans for the development of water and its use, and EPA comes up with something over here that is entirely different, and it seems like there ought to be some coordination in the operation between the two.

Thank you.

The CHAIRMAN. Thank you.

Senator Kyl.

Senator KYL. Thank you, Mr. Chairman.

Senator DOMENICI. Would you yield for a moment?

Senator KYL. Absolutely.

Senator DOMENICI. Mr. Chairman, I have a prepared statement in support of the candidates that I would ask to insert in the record, and I would like that to be made a part of the record, and I would support each of their nominations.

The CHAIRMAN. Very good.

[The prepared statement of Senator Domenici follows:]

PREPARED STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR  
FROM NEW MEXICO

Mr. Chairman, I appreciate your calling this hearing today, because these nominations are critical to the Department of the Interior and to our state of New Mexico. Unfortunately, the Department of the Interior is the only cabinet department in which only the Secretary has been confirmed. This is particularly distressing considering the broad mission of the Department. Its wide jurisdiction includes our national parks, water issues, American Indians, public lands, and preservation of our nation's resources.

Much of the Department's work directly affects New Mexico. The federal government manages over 30 percent of the land in New Mexico. The Interior Department has the duty to protect these lands from the ever present dangers of wildfire. In the wake of the Cerro Grande Fire, which began as a controlled burn by the Park Service that raged out of control and burned over 400 homes and businesses in the Los Alamos area, we all observed how momentous this responsibility is.

New Mexico also has one of the largest American Indian populations. They depend on the Bureau of Indian Affairs to administer child and family services, education programs, and economic development assistance. These services are important in enhancing the quality of life of American Indians and in promoting tribal economic opportunities.

New Mexico and many Western states also rely on the Bureau of Reclamation to assist them in water management issues. The Bureau administers numerous initiatives that help the Western states meet their water needs and help balance the multitude of competing uses of water in the West.

Given the importance of these programs to New Mexico, it is vital that the Interior Department has knowledgeable and experienced officials to carry out its many missions. I am proud to report that the three nominees before the committee today will bring these important qualities to the Department. They have remarkable expertise in interior issues and have outstanding experience in both the public and private sectors. I am certain that they will serve the Interior Department with pride, and I look forward to working with them on issues critical to New Mexico.

Senator KYL. Mr. Chairman, I, too, would like to support all three nominees. I think the President has done an excellent job in reaching out to bring in people not only with a broad experience in the area, but also different points of view that I think should really support the Secretary very, very well.

Most of the time these hearings, the question can be answered with, we will work with you on that. I mean, that is kind of a bottom line on most of these questions, and that is really the bottom line of the question that I pose, but I have a long preamble that I would like to give.

The CHAIRMAN. If you would like to put that in the record, we would be glad to have it.

[Laughter.]

Senator KYL. It is only 4 minutes long, Mr. Chairman. I will keep it within the time limit, but when Bill Myers came to my office for a courtesy visit yesterday, I gave him the full 20 minutes. He could not wait to get out of the office.

The problem is, if all three of you are confirmed, you are going to have to deal with some of these problems, and my main question is, will you work to expedite it, because the problems that I identified, Mr. Myers, and to some extent talked to Mr. Raley about as well, involve Indian water settlements, and Bennett, when you said you had been working on the settlement for 33 years, Ben Campbell has told me the same thing about how long and difficult the Animus-La Plata has been.

We have got the same situation in Arizona. We are just about ready to go with the Zuni settlement. We are working hard on the Gila River settlement, and we will need to turn our attention very soon to the Little Colorado settlement. The Zuni settlement should not be very difficult, but the other two will be very difficult. The Navajo, the largest tribe in the United States, they live side-by-side with the Hopi, and both have claims to the Little Colorado River that raise some difficult issues.

The Gila River Indian Community is directly south of Phoenix, fifth or sixth biggest city in the country, and another 20 or so communities with irrigation districts next door, and a water budget that has been agreed to of 645,000 acre feet. We have determined that just about half of the Colorado River that Arizona is entitled to, a million and a half acre feet, will go to the Indian water settlements, believe it or not.

The cost of completing the irrigation projects for the Gila River Tribe are approaching \$1 billion, so these are very significant settlements, and soon I am going to have to visit with you, Mr. Chairman, about how we, once we introduce the legislation, get hearings and move these settlements forward. They are going to be very complicated, they are going to be very difficult, but in order for them to work they are going to require a lot of commitment of time by all of you in the Department.

And I think, if I understand the obligations that each of the three of you have, each of the three of you will have to have, at some point, some interface with these settlements.

The only thing I can ask of you now is to work with us to expedite the Department's participation as much as possible, and that is a commitment, obviously, each of you can make easily, because you do not know anything about it yet, but we are going to need substantial cooperation from the Department.

All three of these settlements were supported by the previous administration, and we advanced them significantly with the help of Secretary Babbitt, and David Hayes in his office. There is nothing partisan about any of them. They are all strictly bipartisan, and I guess without getting into any more detail, Mr. Chairman, I am making a plea at this point in advance for cooperation not only from the members of this committee, but also from the people at the Department of the Interior, because working together we might be able to get these settlements done within a time frame that some of the members of the Indian community alive today will actually see the benefits.

I know that Senator Campbell and I have commiserated about this problem for a long time, translating paper rights into wet water, and it is my goal that we will get this accomplished as soon as we possibly can, with the cooperation of these very fine nominees here.

So that is sort of the question. If any of you would like to comment, you are welcome to do so, but let me just say, I am looking forward to working with all three of you.

Thank you, Mr. Chairman. That was 3½, 4 minutes.

The CHAIRMAN. You did an excellent job. Any comments in response to any of that?

Mr. RALEY. Senator, we will work with you.

[Laughter.]

The CHAIRMAN. That is a profile in courage if I ever heard one.

[Laughter.]

The CHAIRMAN. Let me ask a few additional questions.

Mr. Raley, the Bush administration has proposed deep cuts in the budget for the Geological Survey for this next year, for 2002 fiscal year. The water resources program in that Department will be particularly hard hit. If you are confirmed, will you revisit the decision to make those cuts and work with those of us here in Congress to try to ensure that there is adequate funding for the Geological Survey?

Mr. RALEY. Senator, most certainly we will work with you and other members of Congress on the budget. I was not involved in the 2002 budget. One of the first tasks that I will have if confirmed is to work on the 2003 budget. I know that there will be tough choices

and trade-offs. That is inherent in the budgeting process, and also inherent in the process is working with the Hill to figure out the appropriate prioritization of the scarce resources.

The CHAIRMAN. Thank you. The Albuquerque area manager for the Bureau of Reclamation and the Upper Colorado regional director positions, both of those positions have been vacant for some time. This has hampered efforts to resolve some of the water conflicts with the Pecos and the Rio Grande. If confirmed, would you move quickly to fill those key positions?

Mr. RALEY. Yes, sir.

The CHAIRMAN. What is your view of the efforts of the previous administration to use a river basin or ecosystem approach such as the Cal Fed, the Platte River, or the Upper Colorado River recovery program? Would you continue those types of efforts, if confirmed?

Mr. RALEY. Absolutely, sir. That is what I was trying to say in my opening statement, that is the only way that these complex, large basin issues can be resolved, because if you try and address them piecemeal through litigation, or piecemeal through individual permit applications, they are so interrelated, the actions of entities in the basin are so interrelated it is virtually impossible to come up with a rational solution, and while the cooperative processes, like you mentioned, are difficult, and require endless person-years of time, I believe they are the only way to move forward with sustaining a strong economy and protecting our environment.

The CHAIRMAN. One other issue I want to flag for you, and put it in the same category of Senator Kyl's issue, as one that I need to ask you work with us on, is the problem of the depletion of the Ogalala aquifer, which involves the eastern part of New Mexico and, of course, parts of west Texas, and several other States.

This is an issue that I think requires some Federal attention. Now, I do not know precisely what the Federal role is. I introduced a bill in the last Congress that tries to identify a way of approaching the problem to reduce the rate of depletion of that underground aquifer, and I would be interested to call that to your attention and ask for your help in coming up with some solutions to this problem, because long-term, as I think you are well aware, the depletion of that aquifer is a major economic problem for that part of the country.

Mr. RALEY. Yes, sir. As a matter of fact, one of the jobs that I had when I was trying to earn money for law school after college was working for a subcontractor on an Ogalala aquifer study, and I traveled through parts of it interviewing farmers about the decline in water levels and the consequences, and while that experience is somewhat dated now, as you mentioned the problem I flashed back to it, and understand its importance.

The CHAIRMAN. Thank you very much. That is all the questions I have.

Senator Akaka, did you have some additional questions?

Senator AKAKA. Yes, Mr. Chairman. I have a question for Ms. Scarlett. I want to return to the reconciliation report.

The primary recommendation in the reconciliation report called for an extension of Federal policy of self-determination and self-governance to Native Hawaiians in government-to-government relationships. I have introduced legislation to provide for such a proc-

ess upon the reorganization of the Native Hawaiian governing entity.

It is my understanding that the Department is currently reviewing this legislation. Have you had an opportunity to review S. 746, and what are your thoughts about that legislation?

Ms. SCARLETT. thank you, Senator. I have not had an opportunity with the Department yet. We have had a very arm's-length overview of issues so far, but I certainly appreciated your raising this issue when we met the other day, and look forward to looking at that legislation, and look forward to working with you and with the Department to develop its response to that.

Senator AKAKA. Mr. Myers, would you have any comment on that?

Mr. MYERS. I can't add to Ms. Scarlett's comments.

Senator AKAKA. Mr. Myers, Guam and the U.S. Virgin Islands are the only two territories whose tax codes mirror the U.S. tax codes. As a result, President Bush's tax cut plan will require rebates or credits to come from the territorial governments, rather than the U.S. Treasury.

Given the fact that the governments of Guam and the Virgin Islands are in deficit, and face double-digit unemployment rates, what coordination will be undertaken by the Department of the Interior and Treasury to work with the territorial governments on ameliorating the effects of the tax cut plan on their economies?

Mr. MYERS. I think you have put your thumb right on it, which is, it is going to be primarily a Department of Treasury issue, I assume, based on the revenue issues raised by it, but because of the Department of the Interior's jurisdiction regarding the territories, we are going to have a role, and I would be happy to engage my parallel colleague at the Department of Treasury and discuss this.

I will admit to you, sir, I do not know anything about it, but I will learn about it.

Senator AKAKA. I want to thank you for your responses. It is good to have you here, and I wish you well.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator Smith.

Senator SMITH. Thank you, Mr. Chairman. I extend my congratulations to each of the nominees, and look forward to helping them in their service, and I wish them every success.

Bennett, I wonder if I could address a few questions to you, inasmuch as you will be in charge of the Bureau of Reclamation, or its oversight. In my home county of Umatilla County, Oregon, for more than a decade they have been trying to resolve the water boundary issue, and that dispute is holding up an authorization of what is called phase 3 of the Umatilla project, and I wonder if you can give me a commitment to make resolution of these boundaries a high priority?

Mr. RALEY. Yes, sir, I can. I do not know that I will be able to succeed, but I will try.

Senator SMITH. It is very, very important, and I think the parties involved are closer than ever, and I think with a push from the Bureau, I would think this could be done, to the great benefit of all involved, the environment, the tribes, and the local communities in



that area could be benefitted by completion of the projects, and water exchanges.

I do not know whether you have seen the *New York Times* today, but it is hard not to pick up a paper or listen to some of the cable news networks without having the plight of Klamath County, Oregon rudely confront the reader and the observer with what a man-made catastrophe we have in this part of California and Oregon, and I wonder if you can tell me how you will make sure that this never happens again, what the Department will do to assure that these 1,200 farm families, 200,000 acres, will not have sacrificed a year of their lives in vain. What ideas do you have, and what does the Department intend to do to make sure that there are not more Klamath Falls situations throughout the West?

Mr. RALEY. Senator, I believe that the issue of how to comply with the Endangered Species Act in a way that recognizes and preserves local communities is one of the highest priorities that will be addressed within the Department, and while I cannot promise you—I wish I could—that it will never happen again, I will promise you that that issue of trying to find innovative ways through collaboration to achieve the needs of the species and respect water rights and contract rights, it just simply has to be a departmental priority.

I know the Secretary has made it a priority. As short-staffed as she has been, she has assigned her top people to these issues, and I can promise you that the Klamath will be one of my priorities because of the urgency of the situation up there.

Senator SMITH. I would appreciate it. This situation has become something of a poster child all over the West. There was a rally there recently, and I conservatively would estimate the bucket brigade we had as a peaceful protest of 15,000 people, and there were people from all over the West, and I even told the chairman that there were some Rio Grande irrigators from new Mexico there, who shared with me their concern that they did not realize that this actually could happen, that the silvery minnow there that jeopardizes their rights, they never thought that that could ultimately end their way of life until they saw what happened on the Klamath.

So if this keeps going, it is going to go all over the West. The Klamath is just the first, if we do not get some kind of change in the operation of the Endangered Species Act. For example, just independent peer review, which would have been nice in the case of the Klamath, but it just was not there.

I am a cosponsor of a bill with Senator Baucus that the Interior Secretary before Bruce Babbitt said that he supported, and it is modest, I grant you, but it would have helped in the case of the Klamath to have things like independent peer review, and I wonder if this administration would consider supporting that and pushing it so that it is not blocked by people on the right and the left, because frankly, it was an odd coalition of folks on the right and the left that killed this last effort, and I am afraid if it is killed again, it may bring the silvery minnow into more focus, and I would love to get your support of the effort Senator Baucus and I are making.

Mr. RALEY. Senator, to the extent that the Secretary details me to work on that, I will give it my best. I know that, I have no doubt

that the effort that you and Senator Baucus have made is going to get attention at the highest levels in the Department.

Senator SMITH. Mr. Myers, I wonder if you could give me your feelings about these issues, as the Solicitor to the Department.

Mr. MYERS. Well, Senator, I live in your neck of the woods, not quite in Oregon, but in Boise, and I have seen the same drought that your irrigators have experienced afflict the farmers and ranchers where I live, and I have seen the snow pack not appear this year. The hot weather is upon us. It is going to be a tremendously bad fire season. We need water.

The good Lord has not chosen to provide it, and we need to figure out in some fashion how to deal with the conflicts that are arising between people who have used these lands for decades, for generations, and want to continue to do so, and the need to protect species, which the Congress has mandated is of utmost importance, through the Endangered Species Act.

That is the conflict. Whether the Congress will have the will to make any amendments to the act, I can't say, but within our Department we will do what we can to support the irrigators and the species at the same time through the Bureau of Reclamation, through the Fish and Wildlife Service.

For my part, obviously, I want to be involved, as litigation has ensued, so I am going to be participating in that, and in deciding whether we go forward in settlement or in litigation, as these cases arise.

I know it is a fairly vague answer to your question, but I want you to know that I know what you are talking about I have seen it, and I have friends who are in the Klamath Basin, and so I appreciate you raising it.

Senator SMITH. Well, the Klamath Basin puts a human face on this government-made tragedy, and I grant you that the West is an arid place, and the Government has overcommitted, in the West, its resources to too many groups, but if you want to see human tragedy, go to Klamath County in Oregon, and you will see the worst kind of results of government policy, and we need the emergency support of the administration to help these folks get through this year, and we need some change, administratively or statutorily, to make sure this never happens again, because I cannot defend it. It is inexcusable, and I am determined to change it.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, and let me thank all of the nominees for appearing and giving us testimony this morning, and the committee will undoubtedly be acting on your nomination at some early date. I do not know precisely when to advise you, but we appreciate you being here.

That is the end of the hearing.

[Whereupon, at 10:55 a.m., the hearing was adjourned.]

APPENDIX  
RESPONSES TO ADDITIONAL QUESTIONS

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Hon. JEFF BINGAMAN,  
*Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: Enclosed you will find my responses to the written questions following my confirmation hearing before the Senate Energy and Natural Resources Committee on June 20th.

If I can be of further assistance, please let me know.

Sincerely,

WILLIAM GERRY MYERS III,  
*Solicitor - Designate.*

[Enclosures.]

RESPONSE OF MR. MYERS TO QUESTION FROM SENATOR WYDEN

*Question.* What projects do you hope to work on in this Administration that would showcase your ability to work out natural resource issues between people and groups that fundamentally disagree with one another?

*Answer.* Problem solving is the essence of good lawyering. While I have not chosen any specific project to undertake, I have no doubt that I will regularly meet with persons and groups engaged in fundamental disagreements. I support alternative dispute resolution and it is my understanding that the Office of the Solicitor is currently testing ADR techniques. I will also bring to the position my personal experience working on committees and in groups whose memberships were intentionally diverse and at times combative.

RESPONSES OF MR. MYERS TO QUESTIONS FROM SENATOR SMITH

*Question.* For several years, I have been concerned about the Bureau of Reclamation's policy that seeks to deny water to companies with any foreign ownership, or U.S.-based subsidiaries of parent companies with foreign ownership, based on an administrative policy. Can you provide me with any statutory justification in the Reclamation Reform Act of 1982 for this policy?

*Answer.* I am informed that the current Bureau of Reclamation regulations do not deny irrigation water to foreign companies that hold subsidiaries incorporated under State or Federal law and which meet information reporting requirements of the Reclamation Reform Act.

*Question.* Will you commit to review this policy, which is being used in an attempt to deny water to one of the largest employers in Southern Oregon, with an eye to ensuring that eligibility is afforded to project beneficiaries in accordance with the law, not with the desires of those Reclamation personnel who administer the program?

*Answer.* If confirmed, I will undertake a review of the Bureau's policy to ensure compliance with applicable laws and regulations. Bureau employees, like all departmental employees, are bound by these laws and regulations. While I cannot pre-judge the outcome of that review, I can state that policy must comport with these laws and regulations.

*Question.* The Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians are one of nine federally recognized tribes in the state of Oregon. As you are aware, there has been contention in recent years over the designation of certain tribally-owned lands as "restored" lands under Section 20 of the Indian Gaming Regulatory Act (IGRA). On September 29, 2000 the United States District Court for the District of Columbia rejected the federal interpretation of Section 20 of IGRA and remanded the case to the Department for further interpretation.

To this point, I am unaware of any further action taken by the Department. In order to respond to inquiries I have received from constituents concerned about this case, please give me an update on the status of the Department's preparation of a final determination on this matter.

Answer. I have been informed that this issue is undergoing staff review at the Department. Since the "restored" lands exception raises important national policy and legal issues, the final decision must await my confirmation and that of Neal McCaleb. Once confirmed, I will work with Mr. McCaleb to complete work on this issue as soon as possible.

RESPONSE OF MR. MYERS TO QUESTION FROM SENATOR DOMENICI

SANDIA MOUNTAIN

*Question.* The Sandia Pueblo has a long standing claim to ownership of the Sandia Mountain near Albuquerque, New Mexico. This claim clouds title to the homes of over 40 families and jeopardizes the public's access to this recreational and federal wilderness area.

This case has a long history with the Interior Department and at least two Solicitors have issued different opinions on the matter.

Will you personally look into this important and long standing dispute and help facilitate a solution acceptable to all parties?

Answer. Yes, I will. The Secretary has indicated that the next Solicitor will review the Solicitors' opinions on this issue and the related information, and will consider all available options for resolving this dispute in a way that addresses the concerns of the interested parties. If confirmed, I look forward to working with you and others from the New Mexico Congressional delegation to reach a mutually acceptable resolution of this important matter.

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Hon. JEFF BINGAMAN,  
*Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: Enclosed you will find my responses to the written questions following my confirmation hearing before the Senate Energy and Natural Resources Committee on June 20th.

If I can be of further assistance, please let me know.

Sincerely,

PATRICIA LYNN SCARLETT,

*Assistant Secretary for Policy, Management and Budget - Designate.*

[Enclosures.]

RESPONSE OF MS. SCARLETT TO QUESTION FROM SENATOR CAMPBELL

*Question.* The Department of Interior has 77,000 employees. The National Business Center (NBC) within the Department of Interior is headquartered in Denver, CO and employees about 500 people in my state. We have heard that the Department is developing a new program through the NBC that will greatly improve the Human Resource services to the DOI employees. According to a Booz-Allen Hamilton study this new program will save the Department \$28.5 million over 2 years. This sounds like something that is to be encouraged. Do you have any comments?

Answer. I am aware of the Department's efforts in pilot testing the Federal Human Resources Information System (FHRIS) and will look closely at this proposed system, as I support the goal of improving human resource services and reducing costs.

RESPONSE OF MS. SCARLETT TO QUESTION FROM SENATOR WYDEN

*Question.* What projects do you hope to work on in this Administration that would showcase your ability to work out natural resource issues between people and groups that fundamentally disagree with one another?

Answer. Secretary Norton has articulated a "4C's" vision for the Department of the Interior in which conservation goals will be pursued through emphasis on collaboration, communication, and consultation. I hope to work with Secretary Norton to showcase these collaborative approaches in two ways: 1) building upon existing programs within the Department that already embody these collaborative approaches to addressing resource management challenges; and 2) exploring opportunities to create new partnerships, especially on issues regarding grazing, wildlife preservation, habitat restoration, and water management.

Should I be confirmed, some possible specific opportunities, which I have not yet had an opportunity to explore with Secretary Norton and other relevant DOI staff but which represent possible models include:

- Exploring use of forums like the Bureau of Land Management's Resource Advisory Councils to provide contexts for communication among ranchers, environmental organizations, local and other government agencies (including the Bureau of Land Management), potentially expanding the advisory and decision making roles of these councils as a forum for finding common ground among participating individuals and groups. Prior to my nomination for the position of Assistant Secretary of Policy, Management, and Budget at the Department of the Interior, I had been involved in some discussions among ranchers and environmentalists about possibilities for developing cooperative ranch land and riparian improvement programs that would focus on meeting both economic and environmental goals of participants. The RACs provide a possible context in which to carry forward this kind of discussion, though I have not had an opportunity to discuss with Secretary Norton and other relevant Department of the Interior staff whether or how the RACs, or some other institution, might be used.
- Developing working relationships with the many existing (and emerging) land trusts engaged in stewardship and resource management, particularly at the rural/urban landscape interface. Many of these trusts have already developed collaborative and cooperative stewardship and resource management programs that can be enhanced through increased cooperation with the Department of the Interior.
- Working through programs like the Partners for Fish and Wildlife Program, which provides a cooperative context for engaging in stream restoration, grazing land improvements, riparian enhancement, and native grass seeding. To date, over 1,000 farmers and ranchers in Montana have participated in these voluntary programs, with a uniformly positive response and a waiting list for additional participation.
- Exploring opportunities for using programs such as the Water Conservation Field Services and Bridging the Headgates partnership, operated by the Bureau of Reclamation. Partnerships modeled on this approach encourage water districts and other water users to develop and implement efficient water management practices. Such partnerships involve flexible options tailored to local needs and designed to complement other federal, state, tribal, and local conservation efforts. The Bridging the Headgate partnership joins water-district and on-farm efficiency measures through five federal and nonprofit partners. The partnership provides a voluntary and cooperative context in which individuals and groups with often deeply divided perspectives can work to address common problems.

As noted earlier, these ideas present potential models for bringing together those holding conflicting interests. If confirmed I look forward to working with Secretary Norton, the Administration, the staff of the Department of the Interior, and members of Congress in shaping and implementing cooperative approaches to land and resource management. If confirmed, I look forward to further discussing these and other ideas with you.

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Hon. Jeff Bingaman,  
*Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: Enclosed you will find my responses to the written questions following my confirmation hearing before the Senate Energy and Natural Resources Committee on June 20th.

If I can be of further assistance, please let me know.

Sincerely,

BENNETT WILLIAM RALEY,  
*Assistant Secretary for Water and Science - Designate.*

[Enclosures.]

#### RESPONSES OF MR. RALEY TO QUESTIONS FROM SENATOR WYDEN

*Question 1.* What projects do you hope to work on in this Administration that would showcase your ability to work out natural resource issues between people and groups that fundamentally disagree with one another?

Answer. Although the exact details of my responsibilities have not been determined by the Secretary of the Interior, I would hope to have a role in establishing a process which is open and accessible to all stakeholders in the Klamath basin and other areas where tension exists between water use, attainment of the goals of the Endangered Species Act, and the Secretary's trust responsibilities to American Indians. I would also like to play a role in the Department's implementation of CALFED. I also believe that attention of the Assistant Secretary to Indian water rights settlements throughout the west would be appropriate.

*Question 2.* We have a serious problem in the Klamath Basin. It is a drought year which means water is low but emotions are running high. There is not enough water to go around to all the farmers who traditionally use it. On top of that, we have federal agencies that are competing with each other and the farmers for that same water. What would you propose as a long term solution to the serious issues in the Klamath Basin that would make real progress towards addressing the needs of the agricultural community and the environment?

Answer. I anticipate that long-term solutions for the basin would include such things as increasing the water supply and/or yield of the Klamath Project while improving water quality and making water conservation and efficiency improvements, consistent with the Secretary's trust responsibility to Indians and the protection of fish and wildlife; developing additional ground water supplies; and identifying innovative uses of existing water resources or market based approaches to meet growing water needs.

*Question 3.* How would you go about finding or forming that long term solution? What projects do you hope to work on in this Administration that would showcase your ability to work out natural resource issues between people and groups that fundamentally disagree with one another?

Answer. Many groups and processes already exist in the basin which are addressing various aspects of the basin's resource issues. I look forward to working with and through these groups and processes as they offer a foundation to build from. I recognize that the federal government needs to provide constructive leadership in cooperation and consultation with all affected parties, and I will do so.

#### RESPONSES OF MR. RALEY TO QUESTIONS FROM SENATOR LANDRIEU

*Question 1.* The Interior Department and other federal agencies should make resources decisions that are based on the best science available. Do you agree that the scientific goals of the Survey should include a mix of basic and applied science that addresses both the needs of the Department and the Nation's long term interests?

Answer. Yes.

*Question 2.* The National Academy of Sciences has just released a recommended water resources research agenda for the next century (Envisioning the Agenda for Water Resources Research in the Twenty-first Century). Do you think the USGS and other federal agencies have a role to play in implementing such a research agenda? What should that role be?

Answer. Although I have not had the opportunity to review the NAS recommendations or the budget resources that will be available to the USGS, I believe the USGS should continue to provide water resources research in cooperation with partners in federal, state, and local government, and in the private sector.

*Question 3.* The so-called "dead zone" or the hypoxia in the Gulf of Mexico may be caused by nutrients that are carried from throughout the Mississippi River basin. As Assistant Secretary will you continue to support scientific research into the causes of and potential solutions for hypoxia in the Gulf?

Answer. Yes, within budget constraints.

*Question 4.* Last year Congress re-authorized the Water Resources Research Act and the state water resources research institutes program. The institutes provide important support to the states in their long-term water planning, policy development, and resources management efforts and serve as a nationwide information transfer network that provides an efficient and effective method to meet diverse water resource needs in different parts of the country. Are you familiar with the state water resources research institute program?

Answer. Yes, in my 18 years of practice of water and environmental law in Colorado, I became familiar with the work of the Colorado State University Water Resources Research Institute.

*Question 5.* What are your thoughts on the potential for integrating research and technology transfer activities of the institutes into the water resources activities of the Department? As Assistant Secretary, how would you propose to improve utilization of the state water resources research institutes?

Answer. I am informed that the research and technology transfer activities of the State Water Resources Research Institutes have been well integrated into the water science activities of the Department. Through the Water Resources Research Act grant program that USGS administers, the Department has had an opportunity to partner with the states on many research collaboration and technology transfer opportunities in the hydrologic sciences.

If confirmed, I look forward to working with all of the Department's partners, including the Institutes.

#### RESPONSES OF MR. RALEY TO QUESTIONS FROM SENATOR SMITH

*Question 1.* Water districts that receive water from the federal Umatilla project have been trying to get a resolution of their district boundaries for over a decade. Failure by the Department, which was authorized to make these boundary adjustments in 1988, is holding up efforts to authorize Phase III of the Umatilla Enhancement Project. Can you give me a commitment to make resolution of these boundaries a high priority?

Answer. Yes.

*Question 2.* Will you commit to tasking a member of your staff, or from Reclamation's Washington office, to oversee the progress of these boundary adjustments?

Answer. I will see to it that the Commissioner of the Bureau of Reclamation and the responsible regional director ensure that progress is made in resolving these boundary adjustment issues.

*Question 3.* I have asked my staff to meet with the affected water districts and Reclamation staff to try to identify a realistic timetable for completion of the boundary adjustments for the respective districts. Will the Department commit to providing the necessary personnel, with decision-making authority, to such a meeting?

Answer. Yes.

*Question 4.* The water users in the Klamath Basin continue to face economic ruin. Will the Administration actively fight for the funds in the supplemental appropriations bill?

Answer. If confirmed, I will actively support the Administration's request for funds in the supplemental appropriations bill.

*Question 5.* Will you ensure that all the studies that are the basis of the current biological opinions for the Klamath Project receive independent scientific review?

Answer. I am advised that in order to address the concerns expressed about the scientific basis for management decisions in the Klamath Basin, the Secretary will direct that the science upon which the FWS Biological Opinion is based, and which exists in the Administrative Record, be subject to an independent scientific review. Such a review is to be conducted by an objective outside scientific body that is widely recognized and has a disciplined scientific focus. In addition, plans already exist to subject the forthcoming DOI commissioned study by Professor Hardy, from Utah State University, to independent peer review.

I am further advised that with regard to Project Operations for coming years, when the Bureau of Reclamation develops future plans to meet its multiple obligations and other biological assessments are developed in consultation with FWS on such plans, FWS will fully review the existing scientific data and seek appropriate public comment and peer review.

#### RESPONSES OF MR. RALEY TO QUESTIONS FROM SENATOR FEINSTEIN

*Question 1.* What is your position on CALFED?

Answer. I have the highest regard for the work of my predecessors, who were instrumental in forging the original CALFED agreement. Both Secretary Norton and I are supportive of the fundamental goals of CALFED. In fact, it may serve as a model of federal cooperation with state and local governments, and water users and environmental stakeholders.

*Question 2.* What role do you see for the Department of the Interior in implementing CALFED?

Answer. I believe a successful implementation of CALFED will require substantial participation by the Department of the Interior.

#### RESPONSE OF MR. RALEY TO QUESTION FROM SENATOR CRAIG

*Question.* I have been an advocate for change of the Federal Energy Regulatory Commission's hydroelectric licensing process. Although I believe there are many things wrong with the current process, I have decided to focus on federal resource agency participation in that process and have introduced legislation that addresses my concerns. Are you familiar with that legislation (S. 71; also contained as Subtitle

C of Title VII of S. 389—the “National Energy Security Act of 2001”), and do you support the changes that the legislation will bring about?

Please explain fully what role you will have in the licensing of non-federal hydroelectric development of our nation’s waterways.

Answer. I am not familiar with the details of S. 71. I know that the issue of hydroelectric licensing is an important one to both the Federal Energy Regulatory Commission (FERC) and to the Department of the Interior. I understand that the Department of the Interior has substantial work under-way to streamline the hydroelectric process.

If confirmed, I will have oversight authority over the Bureau of Reclamation and the U.S. Geological Survey. There are instances where private hydropower is licensed through FERC at a Bureau of Reclamation dam or project. In those instances, it is important to ensure that the license is compatible with the project purposes. Reclamation has that responsibility.

